

FILE COPY

No. 169

Office - Supreme Court, U. S.
FILED

JUL 13 1938

CHARLES ELMORE BROPLEY
CLERK

IN THE
Supreme Court of the United States

October Term, 1938

THE UNITED STATES,
Petitioner

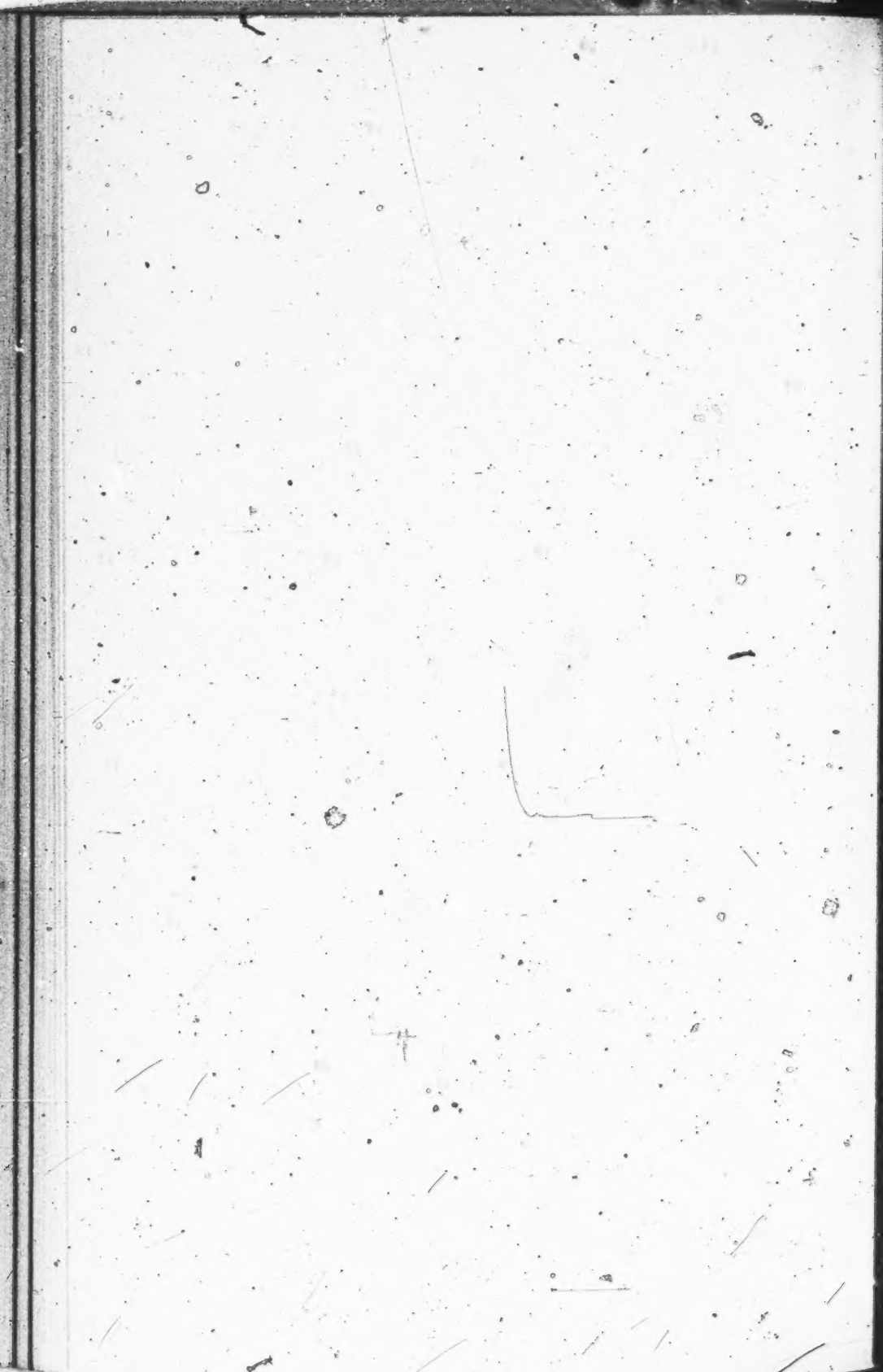
v,

FREDERICK PLEASANTS

RESPONDENT'S BRIEF

✓
FREDERICK SCHWERTNER,
Attorney for Respondent,
1000 National Press Bldg.,
Washington, D. C.

Delafield, Marsh, Porter & Hope,
Lowenhaupt, Waite & Stolar,
George H. Warrington,
Wright & Rundle,
Of Counsel.



IN THE
Supreme Court of the United States

October Term, 1938

No. 169

THE UNITED STATES,
Petitioner

v.

FREDERICK PLEASANTS

RESPONDENT'S BRIEF

While we earnestly urge that the decision of the Court of Claims in this case, holding:

- (1) that the base specified in Section 23 (n) of the Revenue Act of 1932 for the calculation of the 15% limitation on the amount deductible for charitable contributions is the taxpayer's taxable net income, as computed without the benefit of the deduction;
- (2) that a "capital net loss," as defined by Section 101 (c) (6) of the Revenue Act of 1932 is not a permissible deduction from gross income in computing such taxable net income (*Piper v. Willcuts*, (CCA 8), 64 F. (2d) 813 affirming 55 F. (2d) 397; *Hoffman v. Commissioner*, (CCA 2), 71 F. (2d) 929; and
- (3) that the base specified in Section 23 (n) for the allowance of contributions is not to be re-

7
duced or extinguished, by an unauthorized deduction,

is a correct interpretation of the statute, and effectuates the evident intent of Congress to encourage contributions to charitable institutions, we respectfully submit that it is entirely proper for the Court to grant certiorari, because of the alleged conflict between the decision below, and the result reached by the Seventh Circuit in *Avery v. Commissioner*, 84 F. (2d) 905, and the Third Circuit in *Lackhart v. Commissioner*, 89 F. (2d) 143 and *Heinz v. Commissioner*, 94 F. (2d) 832. There is no conflict between the decision below and *Helvering v. Bliss*, 293 U. S. 144.

The question at issue is presently pending before the Third Circuit in *Zimmerman v. Commissioner*, 36 B.T.A. 618, on appeal from the Board's decision, and *Heinz v. Commissioner*, supra, on petition for rehearing, and before the Eighth Circuit in *Watkins v. Commissioner*, *Moulton v. Commissioner* and *Johnson v. Commissioner*, on appeal from a memorandum decision of the Board.

Respectfully submitted,

FREDERICK SCHWERTNER,
Attorney for Respondent,
1000 National Press Bldg.,
Washington, D. C.

Delafield, Marsh, Porter & Hope,
Lowenhaupt, Waite & Stolar,
George H. Warrington,
Wright & Rundle,
Of Counsel.

July, 1938.

Y